

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

Amend Title 10, California Code of Regulations, Chapter 5, Subchapter 7.6, Sections
2696.1 through 2696.10 Insurance Mediation Program

CDI File No. RH03030123

Date: August 11, 2006

SUBJECT OF HEARING

Notice is hereby given that the California Insurance Commissioner (the Commissioner) proposes to adopt the regulation described below after considering comments from the public. The Commissioner proposes to amend Title 10, California Code of Regulations, Chapter 5, Subchapter 7.6 Sections 2696.1 through 2696.10 Insurance Mediation Program. The proposed amendments will add automobile collision and physical damage disputes to the Department's mediation program. The proposed amendments will also update the regulations to include definitions of new terms, delete certain procedural sections and clarify existing procedures.

AUTHORITY AND REFERENCE

Per Government Code section 11349(b) "Authority" means the provision of law which permits or obligates the agency to adopt a regulation. The authority for the proposed amendments is the express authority provided by Insurance Code section 10089.70 which states that the Department shall establish a program for the meditation of disputes arising under automobile collision coverage or automobile physical damage coverage. Insurance Code section 10089.83 also provides the Department with express authority to promulgate regulations to administer the mediation program.

"Reference" means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific when adopting a regulation. The following statutes are referenced as being made specific by the proposed regulation. The proposed amendments are implementing and making specific California Insurance Code sections 10089.70, 10089.71, 10089.72, 10089.74, 10089.75, 10089.76, 10089.77, 10089.78, 10089.79, 10089.80, 10089.81, 10089.82, and 10089.83.

HEARING DATES AND LOCATIONS

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation on the following dates at the following locations.

**October 10, 2006
10:00 a.m.**

**45 Fremont St. 22nd Floor Hearing Room
San Francisco CA 94105**

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS: CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Lara Sweat, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4192
sweatl@insurance.ca.gov

Questions regarding the hearing, comments or the substance of the proposed action should be addressed to the above contact person. If the contact person is unavailable, inquiries may be sent to the backup contact person:

Jose Aguilar, Assistant Chief Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4141
aguilarj@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, care of the contact person at the address listed above, by no later than **5:00 p.m. on October 10, 2006**. Any materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept and strongly encourages written comments transmitted by e-mail, provided they are sent to the following e-mail address: sweatl@insurance.ca.gov. The Commissioner also requests a hard copy of the comments electronically submitted. Please place the following in the subject heading of the e-mail: **CDI File No. RH03030123**. Microsoft Word and "PDF" documents may be attached to e-mails. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of **Lara Sweat** using the following fax number: **(415) 904-5490**. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of subchapter 4.5, title 10 of the California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

Summary of Existing Law

California Insurance Code section 10089.70 et seq provides for the establishment of a mediation program for disputes arising out of certain eligible types of claims. SB 708 effective January 1, 2002 amended the existing law to include automobile collision coverage and automobile physical damage coverage disputes as disputes appropriate for the mediation program. SB 64, effective on August 30, 2004 amended existing law to expand the mediation program to include residential property losses, other than earthquake losses, for which the Governor has declared a state of emergency pursuant to Government Code Section 8558. The law was again modified with the enactment of SB 2 in 2005 effective January 1, 2006 that replaced the terms “residential property losses” with “homeowners losses” due to a fire. The current mediation regulations only pertain to Earthquake Mediation and need to be amended to include homeowners and automobile claims.

The proposed amendments also define terms relating to the addition of auto claims to the mediation program and clarify some existing procedures in the mediation program.

POLICY STATEMENT OVERVIEW

In order to comply with the mandate of SB 708, the Commissioner has determined that these amendments are necessary for the Department to properly administer the meditation program as well as to maintain consistency with Insurance Code section 10089.70. By specifically

providing for mediation of automobile collision coverage and automobile physical damage coverage these amendments help foster mediation in the appropriate disputes as well as help to preserve resources.

Further, amendments to the existing mediation procedures were necessary to make clear the procedure for initiating the mediation process, and to clarify existing procedures.

Effect of Proposed Action

As outlined in detail above the proposed amendments will make implement California Insurance Code section 10089.70 by specifically providing for mediation in automobile collision coverage and automobile physical damage coverage disputes.

The proposed amendments provide for greater ease and consistency in conducting mediations for automobile collision coverage and automobile physical damage coverage disputes. Further, these amendments will also ultimately preserve resources by preventing unnecessary litigation on a case by case basis.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The proposed amendments do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that the proposed amendments will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH OTHER STATES

The Commissioner has made an initial determination that amendment of these regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.

- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses affected by the proposed amendments are insurers licensed to transact private passenger automobile insurance in the State of California. The proposed amendments require certain disputes involving homeowners and automobile collision and physical damage claims to be mediated in a nonbinding procedure before a neutral third party.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the amendments may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed amendments will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the amendments are proposed or would be as effective as and less burdensome to affected private persons than the proposed action. The Commissioner, however, invites public comment on alternatives to the amendments.

Performance standards were considered and rejected as these amendments to include automobile collision coverage and automobile physical damage coverage disputes to the mediation program are specifically required. As such, the subject matter does not lend itself to performance standards.

Finally, the Commissioner continues to study alternatives.

IMPACT ON SMALL BUSINESS

The matters proposed herein will only affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610, subd. (b), para. (2).)

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulation.

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed amendments, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

Upon **written or e-mail** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed amendments, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Near the bottom of the page, under "Select a Topic" click on "Consumers". Scroll down to the heading "Regulatory Activity." In this section, scroll down until you see the subheading "Proposed Regulations – Search." Click on the "Proposed Regulations-Search" link. When the "Search" screen appears, you may choose to find the documents by either conducting a search or by browsing for them by name.

To search, enter the Department's regulation file number for these regulations in the "Search for" field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "10089"), or search by key word ("Earthquake or mediation" for example). Then, click on the "submit" button to display links to the various filing documents."

To browse, click on the “Browse All Regulations” button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the “Earthquake Dispute Mediation” link, and click it. Links to the documents associated with these regulations will then be displayed.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

If the regulations adopted by the Department differ from but are sufficiently related to the original text, the Department will make the modified text available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated: -----

JOHN GARAMENDI
Insurance Commissioner

By: _____
Lara Sweat
Staff Counsel